

House Engrossed

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 119

HOUSE BILL 2239

AN ACT

AMENDING SECTION 20-1232, ARIZONA REVISED STATUTES; RELATING TO INDIVIDUAL DEFERRED ANNUITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-1232, Arizona Revised Statutes, is amended to
3 read:

4 20-1232. Standard nonforfeiture law for individual deferred
5 annuities

6 A. Except as provided in subsection L, no contract of annuity, except
7 as stated in subsection K, shall be delivered or issued for delivery in this
8 state ~~from and after June 30, 1979~~ unless ~~such~~ THE contract contains in
9 substance the following provisions or corresponding provisions ~~which~~ THAT in
10 the opinion of the director are at least as favorable to the contract holder
11 ON CESSATION OF PAYMENT OF CONSIDERATIONS UNDER THE CONTRACT:

12 1. That upon cessation of payment of considerations under a contract,
13 OR ON THE WRITTEN REQUEST OF THE CONTRACT OWNER, the company shall grant a
14 paid-up annuity benefit on a plan stipulated in the contract of such value
15 as is specified in subsections D, E, F, G and I.

16 2. If a contract provides for a lump sum settlement at maturity, or
17 at any other time, that upon surrender of the contract at or prior to the
18 commencement of any annuity payments, the company shall pay in lieu of ~~any~~
19 A paid-up annuity benefit a cash surrender benefit of such amount as is
20 specified in subsections D, E, G and I. The company ~~shall~~ MAY reserve the
21 right to defer the payment of ~~such~~ THE cash surrender benefit for a period
22 of NOT TO EXCEED six months after demand for such cash surrender benefit with
23 surrender of the contract AFTER MAKING WRITTEN REQUEST AND RECEIVING WRITTEN
24 APPROVAL FROM THE DIRECTOR. THE REQUEST SHALL ADDRESS THE NECESSITY AND
25 EQUITABILITY TO ALL POLICYHOLDERS OF THE DEFERRAL.

26 3. A statement of the mortality table, if any, and interest rates used
27 in calculating any minimum paid-up annuity, cash surrender or death benefits
28 that are guaranteed under the contract, together with sufficient information
29 to determine the amounts of ~~such~~ THE benefits.

30 4. A statement that any paid-up annuity, cash surrender or death
31 benefits that may be available under the contract are not less than the
32 minimum benefits required by any statute of the state in which the contract
33 is delivered and an explanation of the manner in which ~~such~~ THE benefits are
34 altered by the existence of any additional amounts credited by the company
35 to the contract, any indebtedness to the company on the contract or any prior
36 withdrawals from or partial surrenders of the contract.

37 B. Notwithstanding the requirements of subsection A, ~~any~~ A deferred
38 annuity contract may provide that if no ~~consideration~~ ~~has~~ CONSIDERATIONS HAVE
39 been received under a contract for a period of two full years and the portion
40 of the paid-up annuity benefit at maturity on the plan stipulated in the
41 contract arising from PRIOR considerations paid ~~prior to such period~~ would
42 be less than twenty dollars monthly, the company ~~may~~, at its option, MAY
43 terminate ~~such~~ THE contract by payment in cash of the then present value of
44 ~~such~~ THE portion of the paid-up annuity benefit, calculated on the basis of
45 ON the mortality table, if any, and interest rate specified in the contract

1 for determining the paid-up annuity benefit, and by such THIS payment shall
2 be relieved of any further obligation under such THE contract.

3 C. The minimum values as specified in subsections D, E, F, G and I of
4 any paid-up annuity, cash surrender or death benefits available under an
5 annuity contract shall be based upon minimum nonforfeiture amounts prescribed
6 by this subsection AS FOLLOWS:

7 1. ~~With respect to contracts providing for flexible considerations,~~
8 ~~the minimum nonforfeiture amount at any time at or prior to the commencement~~
9 ~~of any annuity payments shall be equal to an accumulation up to such time at~~
10 ~~a rate of interest of one and one-half per cent per annum of percentages of~~
11 ~~the net considerations paid prior to such time, decreased by the sum of any~~
12 ~~prior withdrawals from or partial surrenders of the contract accumulated at~~
13 ~~a rate of interest of one and one-half per cent per annum and the amount of~~
14 ~~any indebtedness to the company on the contract, including interest due and~~
15 ~~accrued, and increased by any existing additional amounts credited by the~~
16 ~~company to the contract. For the purposes of this subsection, "net~~
17 ~~considerations" means, for a given contract year used to define the minimum~~
18 ~~nonforfeiture amount, an amount not less than zero and equal to the~~
19 ~~corresponding gross considerations credited to the contract during that~~
20 ~~contract year less an annual contract charge of thirty dollars and less a~~
21 ~~collection charge of one dollar and twenty-five cents per consideration~~
22 ~~credited to the contract during that contract year. The percentages of net~~
23 ~~considerations shall be sixty-five per cent of the net consideration for the~~
24 ~~first contract year and eighty-seven and one-half per cent of the net~~
25 ~~considerations for the second and subsequent contract years. Notwithstanding~~
26 ~~the provisions of the preceding sentence, the percentage shall be sixty-five~~
27 ~~per cent of the portion of the total net consideration for any renewal~~
28 ~~contract year which exceeds by not more than two times the sum of those~~
29 ~~portions of the net considerations in all prior contract years for which the~~
30 ~~percentage was sixty-five per cent.~~

31 2. ~~With respect to contracts providing for fixed scheduled~~
32 ~~considerations, minimum nonforfeiture amounts shall be calculated on the~~
33 ~~assumption that considerations are paid annually in advance and shall be~~
34 ~~defined as for contracts with flexible considerations which are paid annually~~
35 ~~with the following two exceptions:~~

36 (a) ~~The portion of the net consideration for the first contract year~~
37 ~~to be accumulated shall be the sum of sixty-five per cent of the net~~
38 ~~consideration for the first contract year plus twenty-two and one-half per~~
39 ~~cent of the excess of the net consideration for the first contract year over~~
40 ~~the lesser of the net considerations for the second and third contract years.~~

41 (b) ~~The annual contract charge shall be the lesser of thirty dollars~~
42 ~~or ten per cent of the gross annual consideration.~~

43 3. ~~With respect to contracts providing for a single consideration,~~
44 ~~minimum nonforfeiture amounts shall be defined as for contracts with flexible~~
45 ~~considerations except that the percentage of net consideration used to~~

1 ~~determine the minimum nonforfeiture amount shall be equal to ninety per cent~~
2 ~~and the net consideration shall be the gross consideration less a contract~~
3 ~~charge of seventy-five dollars.~~

4 1. THE MINIMUM NONFORFEITURE AMOUNT AT ANY TIME AT OR BEFORE THE
5 COMMENCEMENT OF ANY ANNUITY PAYMENTS IS EQUAL TO AN ACCUMULATION UP TO THAT
6 TIME AT RATES OF INTEREST, AS PRESCRIBED IN PARAGRAPH 2 OF THIS SUBSECTION,
7 OF THE NET CONSIDERATIONS PAID BEFORE THAT TIME, DECREASED BY THE SUM OF ALL
8 OF THE FOLLOWING:

9 (a) ANY PRIOR WITHDRAWALS FROM OR PARTIAL SURRENDERS OF THE CONTRACT
10 ACCUMULATED AT RATES OF INTEREST AS PRESCRIBED IN PARAGRAPH 2 OF THIS
11 SUBSECTION.

12 (b) AN ANNUAL CONTRACT CHARGE OF FIFTY DOLLARS, ACCUMULATED AT RATES
13 OF INTEREST AS PRESCRIBED IN PARAGRAPH 2 OF THIS SUBSECTION.

14 (c) ANY PREMIUM TAX PAID BY THE COMPANY FOR THE CONTRACT, ACCUMULATED
15 AT RATES OF INTEREST AS PRESCRIBED IN PARAGRAPH 2 OF THIS SUBSECTION.

16 (d) THE AMOUNT OF ANY INDEBTEDNESS TO THE COMPANY ON THE CONTRACT,
17 INCLUDING INTEREST DUE AND ACCRUED.

18 FOR THE PURPOSES OF THIS PARAGRAPH, THE NET CONSIDERATIONS FOR A GIVEN
19 CONTRACT YEAR USED TO DEFINE THE MINIMUM NONFORFEITURE AMOUNT IS AN AMOUNT
20 EQUAL TO EIGHTY-SEVEN AND ONE-HALF PER CENT OF THE GROSS CONSIDERATIONS
21 CREDITED TO THE CONTRACT DURING THAT CONTRACT YEAR.

22 2. THE INTEREST RATE USED IN DETERMINING MINIMUM NONFORFEITURE AMOUNTS
23 IS AN ANNUAL RATE OF INTEREST DETERMINED AS THE LESSER OF THREE PER CENT PER
24 ANNUM AND THE FOLLOWING, WHICH SHALL BE SPECIFIED IN THE CONTRACT IF THE
25 INTEREST RATE WILL BE RESET:

26 (a) THE FIVE-YEAR CONSTANT MATURITY TREASURY RATE REPORTED BY THE
27 FEDERAL RESERVE AS OF A DATE, OR AVERAGE OVER A PERIOD, ROUNDED TO THE
28 NEAREST ONE-TWENTIETH OF ONE PER CENT, SPECIFIED IN THE CONTRACT NO LONGER
29 THAN FIFTEEN MONTHS BEFORE THE CONTRACT ISSUE DATE OR REDETERMINATION DATE
30 UNDER SUBDIVISION (d) OF THIS PARAGRAPH.

31 (b) REDUCED BY ONE HUNDRED TWENTY-FIVE BASIS POINTS.

32 (c) WHERE THE RESULTING INTEREST RATE IS NOT LESS THAN ONE PER CENT.

33 (d) THE INTEREST RATE SHALL APPLY FOR AN INITIAL PERIOD AND MAY BE
34 REDETERMINED FOR ADDITIONAL PERIODS. THE REDETERMINATION DATE, BASIS AND
35 PERIOD, IF ANY, SHALL BE STATED IN THE CONTRACT. THE BASIS IS THE DATE OR
36 AVERAGE OVER A SPECIFIED PERIOD THAT PRODUCES THE VALUE OF THE FIVE-YEAR
37 CONSTANT MATURITY TREASURY RATE TO BE USED AT EACH REDETERMINATION DATE.

38 3. DURING THE PERIOD OR TERM THAT A CONTRACT PROVIDES SUBSTANTIVE
39 PARTICIPATION IN AN EQUITY INDEXED BENEFIT, IT MAY INCREASE THE REDUCTION
40 DESCRIBED IN PARAGRAPH 2, SUBDIVISION (b) OF THIS SUBSECTION BY UP TO AN
41 ADDITIONAL ONE HUNDRED BASIS POINTS TO REFLECT THE VALUE OF THE EQUITY INDEX
42 BENEFIT. THE PRESENT VALUE AT THE CONTRACT ISSUE DATE, AND AT EACH
43 REDETERMINATION DATE THEREAFTER, OF THE ADDITIONAL REDUCTION SHALL NOT EXCEED
44 THE MARKET VALUE OF THE BENEFIT. THE DIRECTOR MAY REQUIRE A DEMONSTRATION
45 THAT THE PRESENT VALUE OF THE ADDITIONAL REDUCTION DOES NOT EXCEED THE MARKET

1 VALUE OF THE BENEFIT. LACKING SUCH A DEMONSTRATION THAT IS ACCEPTABLE TO THE
2 DIRECTOR, THE DIRECTOR MAY DISALLOW OR LIMIT THE ADDITIONAL REDUCTION.

3 4. THE DIRECTOR MAY ADOPT RULES TO IMPLEMENT PARAGRAPH 3 OF THIS
4 SUBSECTION AND TO PROVIDE FOR FURTHER ADJUSTMENTS TO THE CALCULATION OF
5 MINIMUM NONFORFEITURE AMOUNTS FOR CONTRACTS THAT PROVIDE SUBSTANTIVE
6 PARTICIPATION IN AN EQUITY INDEX BENEFIT AND FOR OTHER CONTRACTS WHERE THE
7 DIRECTOR DETERMINES THAT ADJUSTMENTS ARE JUSTIFIED.

8 D. Any paid-up annuity benefit available under a contract shall be
9 such that its present value on the date annuity payments are to commence is
10 at least equal to the minimum nonforfeiture amount on that date. ~~SUCH~~ THE
11 present value shall be computed using the mortality table, if any, and the
12 interest rate specified in the contract for determining the minimum paid-up
13 annuity benefits guaranteed in the contract.

14 E. For contracts ~~which~~ THAT provide cash surrender benefits, ~~such~~ THE
15 cash surrender benefits available prior to maturity shall not be less than
16 the present value as of the date of surrender of that portion of the maturity
17 value of the paid-up annuity benefit ~~which~~ THAT would be provided under the
18 contract at maturity arising from considerations paid prior to the time of
19 cash surrender reduced by the amount appropriate to reflect any prior
20 withdrawals from or partial surrenders of the contract, THE PRESENT VALUE
21 BEING CALCULATED ON THE BASIS OF AN INTEREST RATE NOT MORE THAN ONE PER CENT
22 HIGHER THAN THE INTEREST RATE SPECIFIED IN THE CONTRACT FOR ACCUMULATING THE
23 NET CONSIDERATIONS TO DETERMINE MATURITY VALUE, DECREASED BY THE AMOUNT OF
24 ANY INDEBTEDNESS TO THE COMPANY ON THE CONTRACT, INCLUDING INTEREST DUE AND
25 ACCRUED, AND INCREASED BY ANY EXISTING ADDITIONAL AMOUNTS CREDITED BY THE
26 COMPANY TO THE CONTRACT. ~~Such present value shall be calculated on the basis~~
27 ~~of an interest rate not more than one per cent higher than the interest rate~~
28 ~~specified in the contract for accumulating the net considerations to~~
29 ~~determine such maturity value, decreased by the amount of any indebtedness~~
30 ~~to the company on the contract, including interest due and accrued, and~~
31 ~~increased by any existing additional amounts credited by the company to the~~
32 ~~contract. In no event shall any cash surrender benefit be less than the~~
33 ~~minimum nonforfeiture amount at that time. The death benefit under such~~
34 ~~contracts shall be at least equal to the cash surrender benefit.~~

35 F. For contracts ~~which~~ THAT do not provide cash surrender benefits,
36 the present value of any paid-up annuity benefit, available as a
37 nonforfeiture option at any time prior to maturity shall not be less than the
38 present value of that portion of the maturity value of the paid-up annuity
39 benefit provided under the contract arising from considerations paid prior
40 to the time the contract is surrendered in exchange for, or changed to, a
41 deferred paid-up annuity, ~~Such~~ THE present value shall be BEING calculated
42 for the period prior to the maturity date on the basis of the interest rate
43 specified in the contract for accumulating the net considerations to
44 determine ~~such~~ maturity value and increased by any ~~existing~~ additional
45 amounts credited by the company to the contract. For contracts ~~which~~ THAT

1 do not provide any death benefits prior to the commencement of any annuity
2 payments, ~~such~~ THE present values shall be calculated on the basis of such
3 interest rate and the mortality table specified in the contract for
4 determining the maturity value of the paid-up annuity benefit. However, in
5 no event shall the present value of a paid-up annuity benefit be less than
6 the minimum nonforfeiture amount at that time.

7 G. For the purpose of determining the benefits calculated under
8 subsections E and F, in the case of annuity contracts under which an election
9 may be made to have annuity payments commence at optional maturity dates, the
10 maturity date shall be deemed to be the latest date for which election shall
11 be permitted by the contract, but shall not be deemed to be later than the
12 anniversary of the contract next following the annuitant's seventieth
13 birthday or the tenth anniversary of the contract, whichever is later.

14 H. Any contract ~~which~~ THAT does not provide cash surrender benefits
15 or does not provide death benefits at least equal to the minimum
16 nonforfeiture amount prior to the commencement of any annuity payments shall
17 include a statement in a prominent place in the contract that such benefits
18 are not provided.

19 I. Any paid-up annuity, cash surrender or death benefits available at
20 any time, other than on the contract anniversary under any contract with
21 fixed scheduled considerations, shall be calculated with allowance for the
22 lapse of time and the payment of any scheduled considerations beyond the
23 beginning of the contract year in which cessation of payment of
24 considerations under the contract occurs.

25 J. For any A contract which provides, within the same contract by
26 rider or supplemental contract provision, both annuity benefits and life
27 insurance benefits that are in excess of the greater of cash surrender
28 benefits or a return of the gross considerations with interest, the minimum
29 nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture
30 benefits for the annuity portion and the minimum nonforfeiture benefits, if
31 any, for the life insurance portion computed as if each portion were a
32 separate contract. Notwithstanding the provisions of subsections D, E, F, G
33 and I, additional benefits payable in the event of total and permanent
34 disability, ~~or~~ as reversionary annuity or deferred reversionary annuity
35 benefits or as other policy benefits additional to life insurance, endowment
36 and annuity benefits, and considerations for all such additional benefits,
37 shall be disregarded in ascertaining the minimum nonforfeiture amounts,
38 paid-up annuity, cash surrender and death benefits that may be required by
39 this section. The inclusion of such additional benefits shall not be
40 required in any paid-up benefits, unless ~~such~~ THE additional benefits
41 separately would require minimum nonforfeiture amounts, paid-up annuity, cash
42 surrender and death benefits.

43 K. This section shall not apply to any reinsurance, group annuity
44 purchased under a retirement plan or plan of deferred compensation
45 established or maintained by an employer, including a partnership or sole

1 proprietorship, or by an employee organization, or by both, other than a plan
2 providing individual retirement accounts or individual retirement annuities
3 under section 408 of the internal revenue code, as now or hereafter amended,
4 premium deposit fund, variable annuity, investment annuity, immediate
5 annuity, any deferred annuity contract after annuity payments have commenced,
6 or reversionary annuity, nor to any contract which shall be delivered outside
7 this state through an insurance producer or other representative of the
8 company issuing the contract.

9 ~~L. From and after June 30, 1977, any company may file with the~~
10 ~~director a written notice of such company's election to comply with the~~
11 ~~provisions of this section after a specified date before July 1, 1979. After~~
12 ~~the filing of such notice, such specified date, shall be the operative date~~
13 ~~of this section for such company and this section shall become operative with~~
14 ~~respect to annuity contracts thereafter issued by such company. If a company~~
15 ~~makes no such election, the operative date of this section for such company~~
16 ~~shall be from and after June 30, 1979.~~

17 L. THE DIRECTOR MAY ADOPT RULES TO IMPLEMENT THIS SECTION.

18 Sec. 2. Application to future annuity contracts

19 After the effective date of this act, an insurer may elect to apply
20 this act to an annuity contract on a contract form by contract form basis
21 before the second anniversary of the effective date of this act. On and
22 after the second anniversary of the effective date of this act, this act
23 applies to all annuity contracts that are issued by an insurer.

APPROVED BY THE GOVERNOR APRIL 19, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 19, 2004.